IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2138 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUGAJI CHEHARAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2138 of 2001

MR Mr. JM Patel for Petitioner No. 1

MR Sood, AGP for Respondent No. 1 to 3.

MR AJ PATEL for Respondent No. 4-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: /09/2004

CAV JUDGEMENT

In this petition under Article 227 of the Constitution of India the petitioner had challenged the legality and validity of the judgment and order dated 5.12.2000 passed by the Gujarat Revenue Tribunal (for short "GRT") in Revision Application No. TEN.B.A. 321

of 1998 in dismissing the same at the admission stage confirming the order passed by the Deputy Collector (Land Reforms & Appeals), Ahmedabad, dated 18.7.1998 in Tenancy Appeal No. 28 of 1998 and Revision Application No.21 of 1998 in quashing and setting aside the order passed by the Mamlatdar and ALT, City Taluka, Ahmedabad dated 3.1.1998 by which the petitioner was declared as a tenant under the provisions of the Bombay Tenancy & Agricultural Lands Act (hereinafter referred to as "the Act").

2. The dispute is in respect of the land bearing Survey No. 703 admeasuring 1 Hectare 41 Acres and 64 sq.metrs. of land bearing Revenue Survey No. 704 admeasuring 1 Hec. 9 Acres and 27 sq.mtrs. of land situate at Village Naroda, City Taluka, District-Ahmedabad. It appears that the petitioner submitted an application under Section 70(b) and Section 70(nb) of the Act before the Mamlatdar and ALT, City Taluka,Ahmedabad by way of Tenancy Case No. 1 of 1997 and Tenancy Case No. 2 of 1997 declaring himself to be the tenant of the land in question. The Mamlatdar and ALT by his judgment and order dated 3.1.1998 declared the petitioner as a tenant and fixed the purchase price also. The Mamlatdar and ALT further passed an order that on payment of the purchase price necessary certificate will be issued. Being aggrieved and dissatisfied with the order dated 3.1.1998 passed by the Mamlatdar and ALT,City Taluka, Ahmedabad in Tenancy Case No. 1 of 1997 the original landowner preferred appeal before the Deputy Collector (Land Reforms & Appeals), Ahmedabad being Tenancy Case Appeal No. 20/1998. The Deputy Collector (Land Reforms & Appeals) after giving an opportunity and considering the evidence on record allowed the said appeal by quashing and setting aside the order passed by the Mamlatdar and ALT dated 3.1.1998 in Tenancy Case No. 1 of 1997 and 2 of 1997. Being aggrieved and dissatisfied with the judgment and order dated 18.9.1978 passed by the Deputy Collector (Land Reforms & Appeals), Ahmedabad in Tenancy Appeal No. 20 of 1998 and Revision Application No. 21 of 1998 the petitioner preferred Revision Application before the GRT which was numbered as Revision Application No. TEN.B.A. No. 321 of 1998. The said application came to be dismissed by the GRT at the admission stage itself by judgment and order dated 9th December 2000. Being aggrieved and dissatisfied with the judgment and order dated 9th December 2000 passed by the GRT in Revision Application No. TEN.B.A. No. 321 of 1998 the petitioner had preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. The learned Single Judge of this Court, vide order dated 20th July 2001 had dismissed the present Special Civil Application at the admission stage, which was carried in appeal by the petitioner by way of Letters Patent Appeal No. 1113 of 2003 and the Division Bench of this Court [Coram: Mr. B.J. Shethna and M.C. Patel, JJ.] vide order dated 15.6.2004 allowed the said appeal by quashing and setting aside the order dated 20th July2001 passed by the learned Single Judge of this Court dismissing the Special Civil Application No. 2138 of 2001 on the ground that no reasons were assigned by the learned Single Judge while dismissing the Special Civil Application and remanded the matter to the learned Single Judge for deciding the same afresh in accordance with law, and that is how the present Special Civil Application is placed before this Court. The learned advocates are heard at length.

4. Shri JM Patel, ld.advocate appearing on behalf of the petitioner had vehemently submitted that the judgment and order passed by the GRT in dismissing the revision application at the admission stage and confirming the order passed by the Deputy Collector (Land Reforms & Appeals) is absolutely illegal and the same is required to be quashed and set aside. He has further submitted that before dismissing the revision application the Record and Proceedings ("R & P" for short) of the trial Court were not called for which is mandatory as per Rule 13 of the Bombay Revenue Tribunal Rules, 1958 and therefore the order passed by the GRT is vitiated and is required to be quashed and set aside by this Court exercising power under Article 227 of the Constitution of India. He has further submitted that the judgment and order passed by the GRT is against the principles of natural justice as the petitioner is not given adequate opportunity to meet with the documentary evidences which are relied upon by the GRT in its decision and therefore requested to quash and set aside the said order. He has further submitted that in fact the Mamlatdar has in his detailed and reasoned order has held and declared the petitioner to be the tenant of the land in question and therefore the same was not required to be interfered with by the Deputy Collector which has not been considered by the GRT while dismissing the revision application. Under the circumstances he requested to allow the present Special Civil Application.

5. Shri AJ Patel, learned advocate appears on behalf of the original land owners. An affidavit-in-reply is filed on behalf of the respondent more particularly respondent No.4 denying the allegations levelled in the

Special Civil Application. It is submitted in the affidavit-in-reply that the petitioner has developed a habit of committing fraud with the Hon'ble Court by making misrepresentations and by producing false documents in the proceedings before the Courts. He has further submitted that number of proceedings were initiated by the petitioner and/or his wife to create tenancy rights in their favour. Shri AJ Patel has further submitted that in fact the relevant documentary evidence was produced before the GRT and considering the same the GRT has dismissed the revision application confirming the order passed by the Deputy Collector. He has further submitted that in fact in the order the GRT has specifically mentioned that 'perused and gone through the relevant record'. Thus, it is clear that the record was before the GRT. He has further submitted that assuming that the record was not called for then also in view of the fact that documentary evidence which were produced before the Deputy Collector were produced before the GRT and after considering the same GRT has passed an order. There is no prejudice shown by the petitioner by not calling the R & P of the trial Court. He has further submitted that in fact the petitioner was aware of the fact that the Tribunal was relying upon the documentary evidence produced before it and at no point of time the petitioner had raised any objection nor insisted for R & P, and allowed the GRT to pass an order and now when the decision is against him he has come out with the case that as the R & P was not called for the order passed by the GRT is vitiated. He has further submitted that even in the present Special Civil Application itself there is no grievance made by the petitioner with regard to non-calling of R & P by the GRT and it is only in the oral argument the petitioner has made the grievance with regard to non-calling of the R & P by the GRT which is not permissible. He has further submitted that in fact on evidence and considering the documentary evidence both the courts below have concurrently found that the petitioner has failed to prove that he was in possession of the land in question prior to making the application and therefore he cannot be declared to be the tenant with respect to the land in question and this being the concurrent finding of fact this Court should not exercise the power under Article 227 of the Constitution of India more particularly when there is no jurisdictional error much less an error of law committed by the courts below and requested to dismiss the present Special Civil Application.

6. To verify, whether, in fact the R & P was called for by the Tribunal or not, Shri Sood, learned AGP was

directed to call for the R & P and thus the R & P was sent by the GRT to this Court . I have perused the R & P of the GRT from which it is found to be true that the Tribunal had not called for the R & P of the case from the Deputy Collector (Land Reforms & Appeals) and or Mamlatdar and ALT. However, there is a reference to the documentary considered by the GRT and that in the note which is prepared by the GRT there is a reference to the documentary evidence considered by the GRT also.

7. Heard the learned advocates appearing on behalf of the parties. So far as the first contention on the part of the petitioner that the judgment and order passed by the GRT is vitiated due to non-calling of the R & P from the trial court is concerned, Rule 13 and Rule 15 of the Bombay Revenue Tribunal Rules are considered. Rule 13 is with regard to procedure of registering an appeal or application and it provides for preliminary hearing of revision application and/or appeal presented before the Tribunal and under sub-rule (3) of Rule 13 the Tribunal may for sufficient reasons admit or reject an appeal or application at the admission stage and/or preliminary hearing stage. Under sub-rule (4) of Rule 13 the Tribunal may direct the Registrar to call for R & P relating to appeal or application under consideration or any other papers or documents from the Collector or any other authority concerned for the purpose of making an order under sub-regulation (3). Thus, while considering an appeal/application at the preliminary stage, it is not must for the Tribunal to call for R & P relating to the appeal or application. Rule 15 is with regard to calling for the R & P when the R & P are not called for under sub-regulation (4) of Regulation 13. Thus, the procedure under Regulation 13 and Regulation 15 in respect to calling of R & P is different and at a different stage. While considering a revision application/appeal at a preliminary stage, the Tribunal may or may not call for the R & P from the trial Court and may dismiss the appeal or application narrating reasons at the preliminary stage. However, once an appeal/revision application is admitted by the Tribunal after preliminary hearing, then in that case the Tribunal is required to call for the R & P of the case from the trial Court under Rule 15. So, once an appeal/revision application is admitted by the Tribunal, it is a must for the Tribunal to call for the R & P. In the present case, as stated above, the revision application came to be dismissed by the GRT at the preliminary hearing stage itself under Regulation 13 of the aforesaid Rules and therefore it cannot be said that by not calling for the R & P the order passed by the Tribunal is vitiated and contrary to any of the

provisions of the aforesaid Regulations. In fact, on going through the order passed by the GRT and considering the R & P of the GRT, it is found that the Tribunal has in fact considered the documentary evidence produced before it and the certificates which were relied upon by the petitioner before the Mamlatdar and ALT which are discussed by the Deputy Collector in his order while setting aside the order passed by the Mamlatdar and ALT. The petitioner was aware of the aforesaid fact situation and the petitioner had at no point of time objected to for considering the documentary evidence produced before it by the GRT. The petitioner has not made any application before the GRT for calling for the R & P from the trial Court. When the Tribunal was considering the revision application on merits, it was incumbent upon the petitioner to request the Tribunal to call for the R & P had the Tribunal not called for it. The petitioner allowed the GRT to consider the documentary evidence produced before it without calling for the R & P and allowed the GRT to proceed further with the matter, and the GRT accordingly passed the order. Therefore, now it is not open for the petitioner to make a grievance that the GRT has not called for the R & P before dismissing the revision application. In fact, in the petition memo, there is no grievance made by the petitioner for not calling for the R & P by the GRT. It is only during the course of arguments that the learned advocate appearing on behalf of the petitioner had come out with a case and submitted that the order passed by the GRT is vitiated because the R & P of the case was not called for by the GRT, which is not permissible, and, under the circumstances, the argument advanced on behalf of the petitioner has no substance and the same is required to be dismissed.

8. To substantiate his claim of tenancy, the petitioner has relied upon his Ration Card, School Leaving Certificate issued by the Principal of Sagar Vidhyalaya and Shri CC Raval Primary School and Gas Connection. Considering the fact that there is a correction of the date in the Ration Card and Survey No. 704 is written subsequently, the Deputy Collector as well as the GRT have perused the said document and have come to the conclusion that the said Ration Card cannot be relied upon for the purpose of establishing possession of the petitioner. The Deputy Collector as well as the GRT have also considered the School Leaving Certificate issued by the Principal of Sagar Vidhyalaya and CC Raval Primary School. Both the authorities have found that no address is ever written on the Result Sheet issued by the school authorities and the words "Field of Manubhai" are

subsequently added by some one and which are not written by the school. Both the authorities below have also considered the certificate/result sheet issued by CC Raval Primary School and have found that in the result sheet, some words were written like "field of Manubhai" . The school authorities have clearly denied to have written such words by them. Considering the aforesaid documentary evidences which were considered by the Mamlatdar and ALT declaring the petitioner as tenant, both the authorities below, i.e., the Deputy Collector as well as the GRT had come to the conclusion that the petitioner has miserably failed to establish his possession of the land in question. Considering the Gas Connection which is subsequent to that of making an application, the Tribunal as well as the Deputy Collector also held that on the basis of the same the possession of the petitioner cannot be established. Considering the entire evidence on record, both the authorities below have found that the petitioner has failed to prove his possession of the land in question and the petitioner was never in possession of the land in question on the basis of which he can be declared to be the tenant of the land in question. Under the circumstances, both the authorities below have come to the conclusion that the petitioner cannot be declared to the owner of the land in question and had accordingly set aside the order passed by the Mamlatdar and ALT by which the petitioner was declared as a tenant. These are all findings of facts and concurrent findings of facts given by both the authorities below which cannot be reappreciated under Article 227 of the Constitution of India. This Court is not exercising any appellate jurisdiction. Both the authorities below have concurrently on the basis of the evidence on record and appreciation of evidence on record have come to the conclusion that the petitioner was never in possession of the land in question and cannot be declared to be the owner of the land in question. It cannot be said that there is any illegality committed by both the authorities below. There is no jurisdictional error, much less an error of law, committed by both the authorities below, i.e. the Deputy Collector (Land Reforms & Appeals) and the Gujarat Revenue Tribunal which require interference by this Court under Article 227 of the Constitution of India.

9. In the result, there being no substance in the present Special Civil Application the same is required to be dismissed and it is dismissed accordingly. Notice is discharged.

[M.R. Shah, J.]

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